

May 7, 2008

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**REPORT AND DECISION**

SUBJECT: Department of Development and Environmental Services File No. **E0700593**

**CORY & TINA McDONOUGH**

Code Enforcement Appeal

Location: 26911 Landsburg Road Southeast

Appellant: Cory & Tina McDonough  
*represented by* **Jamie Danielson**  
Hanis Greaney Prothero, PLLC  
6703 234th Street, Suite 300  
Kent, Washington 98032  
Telephone: (253) 520-5000

King County: Department of Development and Environmental Services (DDES)  
*represented by* **Holly Sawin**  
900 Oakesdale Avenue Southwest  
Renton, Washington 98055-1219  
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**SUMMARY OF RECOMMENDATIONS/DECISION:**

Department's Preliminary Recommendation:	Deny appeal, with revised compliance schedule
Department's Final Recommendation:	Deny appeal, with revised compliance schedule
Examiner's Decision:	Sustain appeal; reverse and vacate Notice and Order

**EXAMINER PROCEEDINGS:**

Hearing opened:	January 10, 2008
Hearing closed:	January 10, 2008

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.  
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. On October 31, 2007, the King County Department of Development and Environmental Services (DDES) issued a Notice and Order to Appellants Cory and Tina McDonough that found a code violation on a Rural A-5 property located at 26911 Landsburg Road Southeast, in the unincorporated part of the County. The Notice and Order cited the McDonoughs and the property with the following violation of County Code:
  - A. Use of residentially zoned property (with unoccupied house) for professional office purposes (real estate office space) in a zone that does not allow that use.Compliance was required by the Notice and Order to be performed by December 5, 2007 by relocation of the business to an appropriately zoned property.
2. In part, DDES issued its Notice and Order based on its understanding of the Appellants' informing DDES that the dwelling was used only for office purposes, and that no one "resided" at the residence in question.
3. Appellants Cory and Tina McDonough filed a timely appeal of the Notice and Order, making the following claims:
  - A. The property and its dwelling unit comprise a second residence.
  - B. The residence is in part used as a personal home office rather than a professional office, and as a second home and gathering place for their family.
  - C. All business related activities performed in the residence comply with the County's home occupation regulations.
  - D. A number of non-business-related family activities occur in the dwelling, such as occupancy by their two children after school, performance of school homework, regular use for meal preparation and consuming, entertainment such as television viewing, and charity-related community gatherings.
4. The McDonoughs acknowledge that the subject dwelling is not their primary residence, which is nearby in the "Ravensdale"<sup>1</sup> area of the County, but assert that the subject dwelling is a second residence.
5. DDES contends that any residential use of the dwelling unit onsite is "accessory" to the office use. There is no compelling evidence in the record supporting such allegation, either with respect to the relationship between the two uses or the predominance of activity (or any other facet of "accessory" status).

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<sup>1</sup> The subject property is also close to Ravensdale.

6. The preponderance of the evidence shows that the McDonoughs occupy the subject dwelling unit as a residence. In the dwelling unit, they conduct and enjoy commonly experienced residential activities such as meal preparation and enjoyment; school homework; family entertainment activities; family-related activities such as community group entertainment and troop meetings of the Brownies; and occasional occupancy as sleeping quarters.
7. The home occupation activity conducted onsite conforms to the square footage percentage restrictions, limits on engagement of outside employees, etc., imposed by KCC 21A.30.085.
8. In summary, the dwelling unit onsite is used in a residential fashion with a home occupation conducted in conformity with the applicable County Code requirements. The dwelling unit is not “unoccupied” as asserted by the Notice and Order.

#### CONCLUSIONS:

1. “Dwelling” is defined in the Code as “one or more rooms *designed* for occupancy by a person or family for living and sleeping purposes, containing kitchen facilities and rooms with internal accessibility, for use solely by the dwelling’s occupants...” [KCC 21A.06.345, emphasis added] As can be seen from the definition, a dwelling unit under county code is a set of one or more rooms designed for typical residential (see below regarding definitions of “residence,” etc.) occupancy, not necessarily *used* as a “primary” residency.
2. “Home occupation” is defined as “a limited-scale service or fabrication activity undertaken for financial gain, which occurs *in a dwelling unit* or accessory building and is *subordinate to the primary use of the site as a residence*.” [KCC 21A.06.610] The definition of “home occupation” does not require that the “use of the site as a residence” be of a person’s “primary” residence, as opposed to a second residence, etc., only that the home occupation be “in a dwelling unit” and be “subordinate to the primary use of the site as *a residence*.” (Emphasis added)
3. The home occupation regulations implement the defined home occupation accessory use by, among other things, requiring that the home occupation be operated by the dwelling unit’s residents and by limiting the square footage that a dwelling unit may be dedicated and used as a home occupation:

**Home occupations in the A, F and RA zones.** In the A, F and RA zones, *residents of a dwelling unit* may conduct one or more home occupations *as accessory activities*, under the following provisions:

- A. The total floor area devoted to all home occupations shall not exceed twenty percent of the dwelling unit.

...

[KCC 21A.30.085.A; emphasis added]

4. The terms “residence,” “resident,” “residency” and “residential” are not defined in the zoning code, so statutory interpretation resorts to the common and ordinary meaning. Common dictionaries are the best source of ordinary meaning. Examination of a common dictionary reveals that a “resident” is simply “one who resides in a place,” which definition does not offer any defining guidance in this case. It is of note, however, that “residence” is defined in one

respect as “**1 a:** the act or fact of dwelling in a place for some time,” with “for some time” an ambiguous term but seemingly implying some duration in one place, but it is also importantly of note that “residence” is also defined as “**(1) b:** the act or fact of living *or regularly staying* at or in some place...” (italics added), implying that temporary or occasional usage constitutes “residence” as well.<sup>2</sup>

5. It is not uncommon, particularly in the current emerging culture of high personal and family mobility, communications technology and computer networking which have loosened the bounds of geographic limitations, and a relatively affluent society, that many people have more than one home, with a second or additional home utilized not solely for vacation- or recreation-oriented residential purposes *per se*, but often used also as a home office or other home occupation-type use for work purposes along with residential use, simply in a different locale (for whatever reason). Indeed, it is not unheard of that some persons stay at their “vacation home” more than in their typical “primary” residential home, which may be their official residence for tax and/or voting registration purposes. In addition, there is the “snowbird” phenomenon, wherein people reside in one geographic area for half a year and another for half a year (or some other combination of time periods), often for climatic enjoyment. All of these uses are equivalently residential in nature, and they also may include some work usage which may fall under a home occupation definition and be regulated by land use regulations. In short, the distinction between presumed primary residence and vacation home or part-year home has blurred significantly over time.
6. There is no regulation establishing a minimum geographic separation of a person’s multiple residences for purposes of lawfully maintaining residential occupancy of both. The simple fact of the matter is that in this case, with the fact pattern presented and the applicable law as it is, both of the McDonoughs’ residences in the County are occupied residentially, and there is no regulatory bar to maintaining a home occupation in each. There is no regulatory distinction, as some might perhaps expect or feel is appropriate,<sup>3</sup> between a pair of such homes comprised of, for example, one in the urban metropolitan Seattle area and one at Snoqualmie Pass, and the pair in this case comprised of one at the subject location and the other residence in Ravensdale.
7. In summary, the County zoning code as a whole, and its home occupation regulations in particular, do not impose any special land use restrictions on use of a second home or other additional homes that a person may occupy. The terms “primary residence” and “legal residence” (legal for tax and/or voting registration purposes, etc.) are not utilized in the zoning code and the code does not distinguish between a “primary” residence and other residences that a person may have.
8. Further, there is no usage restriction in the code or minimum requirements as to residential occupancy tenure and actual use for sleeping purposes, etc., which may from a common sense standpoint seem to confer a “permanency” of residential use or a “primary” residence qualification. There is no requirement of such qualification under the law.
9. Specifically in this case, county code does not restrict usage of a non-primary residence (a second home, vacation home, etc.) as a “dwelling unit” in relation to a conducted home occupation. There is no regulation that a person is limited to one “home” or to their “primary” residence in the operation of one or more home occupations.

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<sup>2</sup> Webster’s New Collegiate Dictionary 984-5 (1977)

<sup>3</sup> By which comment the Examiner renders no policy judgement, pro or con. Persons who may feel there should be some regulation in this regard would have to seek redress in the legislative arena.

10. By the definition in the zoning code, a home occupation must be “subordinate to the primary use of the site as a residence.” DDES has asserted that any residential use of the onsite dwelling is “accessory” to the office use (and by inference then that the home occupation is not subordinate as required), but as noted in the above Findings there is no compelling evidence in the record that supports such allegation. Although it is certainly understandable that DDES in this instance issued a Notice and Order based on its understanding at the time that the dwelling was used only for office purposes and that no one “resided” in it, the Examiner concludes, based on the preponderance of the evidence and testimony presented in the hearing record and under the applicable law, that the subject dwelling unit is occupied for residential purposes, in conformity with the applicable zoning regulations of the County, and a home occupation is established in the dwelling unit, also in conformity with the regulations.
11. The Notice and Order charge of unlawfully using the subject residentially zoned property for professional office purposes is therefore not supported by the evidence in the record and is not sustained. The property is shown by the evidence to be in use as a dwelling unit with a lawful home occupation. The appeal accordingly shall be sustained and the Notice and Order reversed and vacated.

#### DECISION:

The appeal is SUSTAINED, and the Notice and Order REVERSED AND VACATED.

ORDERED May 7, 2008.

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Peter T. Donahue  
King County Hearing Examiner

#### NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding Code Enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

#### MINUTES OF THE JANUARY 10, 2008, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0700593.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Holly Sawin representing the Department; Jamie Danielson representing the Appellant, and Cory & Tina McDonough, the Appellants.

The following Exhibits were offered and entered into the record:

- Exhibit No. 1 DDES staff report to the Hearing Examiner for E0700593
- Exhibit No. 2 Copy of the Notice & Order issued October 31, 2007

Exhibit No. 3	Copy of the Notice and Statement of Appeal received November 19, 2007
Exhibit No. 4	Copies of codes cited in the Notice & Order
Exhibit No. 5a	Photographs of subject property, taken by Holly Sawin on July 9, 2007
Exhibit No. 5b	Aerial photograph of subject property, taken 2005
Exhibit No. 6	Violation letter from Holly Sawin to Appellants, dated July 10, 2007
Exhibit No. 7	King County Assessor's Floorplan of subject property, dated May 25, 2004
Exhibit No. 8a	Photographs of exterior of subject property, taken by Tina McDonough
Exhibit No. 8b	Photographs of interior lower level of subject property, taken by Tina McDonough
Exhibit No. 8c	Photographs of interior upper level of subject property, taken by Tina McDonough
Exhibit No. 8d	Photographs of Tina McDonough's Windermere office
Exhibit No. 8e	Photographs of Cory McDonough's shop
Exhibit No. 9	Declaration of Shane Davies, dated January 2, 2008
Exhibit No. 10	Declarations of Jeff and Leslie Fuller, dated January 2, 2008
Exhibit No. 11	Declaration of Bill Bremmeyer, dated December 11, 2008/January 3, 2008
Exhibit No. 12	Floor plan of subject property with details of setup drawn by Tina McDonough
Exhibit No. 13	Business License of Cory McDonough's One.7, Inc.
Exhibit No. 14	Business cards of Tina & Cory McDonough

PTD:vsm  
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